89-614



IN THE

SUPREME COURT OF THE UNITED STATES

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October Term, 1989

No. _____

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LOCAL 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Petitioner,

v.

VICTOR BRAY, ET AL,

Respondents.

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# PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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## QUESTIONS PRESENTED FOR REVIEW

1. Has the manner in which the Washington State Supreme Court applied Washington state contract law in the

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instant matter impermissibly impinged upon federal labor policy, thus requiring that federal law must be applied in this instance?

2. Should this matter have been governed by principles of federal labor law rather than state contract law because the IBEW International Constitution that is at issue here falls within the purview of 29 USC §185?

## PARTIES TO THIS PROCEEDING

Petitioner herein is Local 112, International Brotherhood of Electrical Workers, AFL-CIO (Local 112).

Respondents herein are Victor Bray, Robert Bort, Joseph Purczynski and Jimmie M. Scott (Bray, et al).

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## OPINION BELOW

The following opinions, copies of which are attached hereto in the appendix to this petition, have previously been entered in this matter:

1. An unpublished opinion of the Washington State Supreme Court dated June 1, 1989 denying the petitioner's motion for reconsideration.

2. An opinion of the Washington State Supreme Court dated April 6, 1989 and reported at 112 Wn.2d. 253 (1989).

3. An unpublished opinion of the Washington State Court of Appeals, Division III, noted at 51 Wn.App. 1029 (1988).

4. A November 21, 1986 opinion of the Superior Court for Yakima County granting partial summary judgment against the petitioner.

5. A decision by Arbitrator

Robert Redman dated July 25, 1986.

## JURISDICTION

The instant petition was filed with this Court within ninety days of the date upon which the Washington State Supreme Court denied the petitioner's motion for reconsideration, as provided for by the rules of this Court. This Court's jurisdiction is invoked under 28 USC §1257.

## PERTINENT STATUTES

29 USC §185 is pertinent to this matter, and is set forth fully in the appendix attached hereto. 29 USC §158(b)(1)(A) is also pertinent and is set forth fully in the appendix.

## STATEMENT OF THE CASE

The petitioner is a labor organization which is affiliated with the International Brotherhood of Electrical Workers (IBEW) and which is headquartered in Kennewick, Washington. The respondents are IBEW members who were working within the petitioner's jurisdiction at the times that are material hereto.

The petitioner determined pursuant to the IBEW International Constitution that each one of the respondents herein had violated the provisions of the aforesaid constitution, primarily by performing work for non-union contractors within the petitioner's jurisdiction, and specifically, within the State of Washington. As a result, the petitioner imposed fines upon each one of the respondents herein, again pursuant to the IBEW International Constitution. When

the respondents failed to pay these fines, the petitioner filed the instant lawsuit against the respondents in Yakima Superior Court on March 19, 1985 seeking judicial enforcement of its fines. The petitioner's complaint was based upon the IBEW constitution and bylaws of the plaintiff union. (See the Appendix attached hereto.)

Pursuant to local court rules, the Yakima Superior Court initially referred this matter to arbitration. The petitioner argued in the memorandum that it submitted to the arbitrator that, because of the contractual nature of the relationship between the petitioner and the respondents, and because of the principles of federal labor policy that had been enunciated by Congress, federal substantive law was controlling in this instance and mandated judicial enforcement of the fines which the petitioner had imposed upon the respondents in this

matter. (See Appendix).

Subsequently, as is reflected in the opinions that were eventually issued by the Yakima Superior Court, the Washington State Court of Appeals, Division III, and ultimately, the Washington State Supreme Court, in this matter (see Appendix), the petitioner argued to each one of the above-named courts that, as described above, 29 USC §185 and other principles of federal labor law required Washington State courts to apply federal substantive law to the instant matter. (See Appendix). All of the above-named courts, and Arbitrator Redman, rejected these arguments by the petitioner, holding that state contract law was controlling in this matter, and that under state contract law, the fines that are at issue here were not judicially enforceable in Washington State because the IBEW

International Constitution did not specifically state that such fines would be judicially enforced. (See Appendix).

## ARGUMENT

### I. THE MANNER IN WHICH WASHINGTON STATE CONTRACT LAW HAS BEEN APPLIED IN THIS MATTER HAS IMPINGED UPON FEDERAL LABOR POLICY.

The petitioner respectfully submits that the manner in which the Washington State Supreme Court has applied state contract law in this matter: unreasonably interferes with the internal affairs of the petitioner by unnecessarily restricting its access to the Washington State judicial system to enforce reasonable disciplinary measures against its members; is likely to erode the petitioner's effectiveness as a collective bargaining representative and to upset the balance

of power between labor and management for the same reason; and would also work towards frustrating the federal scheme that is embodied in the NLRA, and thus, for the reasons set forth above, is contrary to and impinges upon federal labor policy. 29 USC §158(b)(1)(A); NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 18 L.Ed.2d. 1123, 87 S.Ct. 2001, reh. den. 389 U.S. 892, 19 L.Ed.2d. 202, 88 S.Ct. 13 (1967); Scofield v. NLRB, 394 U.S. 423, 22 L.Ed.2d. 385, 89 S.Ct. 1154 (1969); NLRB v. The Boeing Co., 412 U.S. 67, 36 L.Ed.2d. 752, 93 S.Ct. 1952 (1973); Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 85 L.Ed.2d. 206, 105 S.Ct. 1904 (1985).

As a result, the petitioner respectfully submits that federal substantive law must be applied in this matter in order to interpret and enforce the IBEW International Constitution in a manner

that is consistent with federal labor policy. (Id)

This Court has previously stated that the interpretation and/or enforcement of a contractual relationship between a labor union and its members should be governed by federal labor law whenever principles of state contract law impinge upon federal labor policy, and should be governed by state contract law in every other instance. NLRB v. Boeing Co., supra, at 758-759; Scofield v. NLRB, supra, at p. 391, n.3; NLRB v. Allis-Chalmers Mfg. Co., supra, at 1129-1130.

This Court has not yet had occasion, to the petitioner's knowledge, to apply the principles that are enunciated in the above-cited cases to a specific contractual relationship between a union and its members in order to determine whether a particular application of state contract

law has impinged upon federal labor policy. However, this Court has stated previously that the ability of labor unions to take reasonable disciplinary measures against those of their members who violate union rules and regulations is an "integral" part of federal labor policy. NLRB v. Allis-Chalmers Mfg. Co., supra, at 1128-1130. Congress has specifically protected the ability of labor unions to take such reasonable disciplinary measures against their members in the NLRA. (See 29 USC §158(b)(1)(A)).

The petitioner respectfully submits that previous decisions of this Court have also established that the ability of labor unions to judicially enforce reasonable disciplinary measures which they have imposed upon their members pursuant to union constitutions is also an "integral" aspect of federal labor

policy. NLRB v. Allis-Chalmers Mfg. Co., supra, at 1128; Id, at 1134 (" . . . Congress was operating within the context of a 'contract theory' of the union-member relationship . . . (when it adopted 29 USC §158(b)(1)(A)) . . . (and) . . . the efficacy of a contract is precisely its legal enforceability. A lawsuit is and has been the ordinary way by which performance of private money obligations is compelled. . . ."); Id, at 1129; (" . . . it is suggested that . . . (court enforcement of fines) . . . loses its cogency here because . . . (the union constitution) . . . did not explicitly call for court enforcement. However, the potentiality of resort to courts for enforcement is implicit in any binding obligation."); NLRB v. Boeing Co., supra, at 755-756 (judicial enforcement of fines approved even though union constitution did not contain "court enforceability"

clause); Scofield v. NLRB, supra, at 391, n.3; Plumbers and Pipefitters v. Local 334, 452 U.S. 615, 69 L.Ed.2d. 280, 101 S.Ct. 2546 (1981).

Additionally, state law in the area of labor relations is preempted by federal law whenever state law: (1) would conflict with federal law; (2) would frustrate the federal scheme involved; (3) it is evident from the totality of circumstances that Congress sought to occupy this particular field to the exclusion of the state. Allis-Chalmers v. Lueck, supra, at 118 LRRM 3345, 3348.

This Court has also held that state rules or laws which "upset the balance of power between labor and management expressed in our national labor policy" are preempted by the NLRA. Allis-Chalmers v. Lueck, supra, at 118 LRRM 3345, 3349, n.6.

Under the Washington State Supreme

Court's April 6, 1989 decision in this matter the petitioner would be powerless to judicially enforce reasonable disciplinary measures which it had taken against its members based upon the IBEW constitution. (See Appendix). The petitioner would thus be forced to choose between expelling its members or allowing its members to ignore its reasonable disciplinary measures without fear of punishment. NLRB v. Allis-Chalmers Mfg. Co., supra, at 1129-1130. By being forced to take either one of these two drastic courses of action the petitioner's effectiveness as a collective bargaining representative would clearly be eroded, and thus the balance of power between labor and management would be upset. NLRB v. Allis-Chalmers Mfg. Co., supra, at 1129-1130; Machinists v. Wisconsin Employment Relations Commission, 427 U.S. 132, 146, 92 LRRM 2881 (1976). This would be

contrary to and would impinge upon federal labor policy. Id.

Additionally, by means of its April 6, 1989 decision in this matter, the Washington State Supreme Court has, in effect, decreed that, in order for the petitioner to regain its "integral" right to effectively enforce reasonable disciplinary measures against its members, the petitioner and/or the IBEW will have to amend the IBEW International Constitution, which is applicable in all fifty states and Canada, to include language that has been specified by the Washington State Supreme Court. (See Appendix).

Clearly, such a result conflicts with and impinges upon federal labor policy as it has been enunciated by Congress in the NLRA, and more particularly, in 29 USC §158(b)(1)(A), wherein Congress' intent to allow labor unions to have reasonable freedom to formulate

their own rules for effectively disciplining their members is clear. 29 USC §158(b)(1)(A); NLRB v. Allis-Chalmers Mfg. Co., supra; Scofield v. NLRB, supra; NLRB v. Boeing Co., supra.

Given the fact that similar cases to the instant one have arisen in the past (See ANNOTATION, Right of Labor Union to Enforce In The Courts Fine Validly Imposed Upon Member, 13 ALR 3d. 1004 (1967), and Supplement (1987), and cases cited therein), and given the fact that some of the decisions in the above-cited cases conflict with one another (Id), the issues that are outlined above are clearly recurring in nature and, the petitioner respectfully submits, need to be resolved by the uniform application of federal labor law in order to prevent further confusion and impairment of federal labor policy. NLRB v. Allis-Chalmers Mfg. Co., supra.

The petitioner also respectfully submits that federal labor law, if it was applied in this instance to interpret and enforce the IBEW International Constitution, would require the courts of the State of Washington to judicially enforce the fines that are at issue here, provided that those fines were found to be reasonable in amount. NLRB v. Allis-Chalmers Mfg. Co., supra, at 1128, 1129, 1134; Scofield v. NLRB, supra, at p. 391, n.3; NLRB v. Boeing Co., supra.

## II. ACTIONS SUCH AS THE INSTANT ONE FALL WITHIN THE PURVIEW OF 29 USC §185, AND THUS ARE GOVERNED BY FEDERAL SUBSTANTIVE LABOR LAW.

29 USC §185(a), which is set forth in the Appendix hereto, has long been interpreted by this Court as embodying Congress' intent that principles of federal substantive labor law, fashioned

from Congress' national labor policies, should govern the interpretation and enforcement of collective bargaining agreements between labor organizations and employers. Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 7 L.Ed.2d. 483, 82 S.Ct. 519 (1962); Textile Workers v. Lincoln Mills, 353 U.S. 448, 1 L.Ed.2d. 972, 77 S.Ct. 912 (1957). This has been the case regardless of whether actions based on 29 USC §185 have been brought in federal or state court. Id.

In 1981, this Court held that Congress also intended 29 USC §185 to govern the interpretation and enforcement of union constitutions, at least where the parties who are seeking interpretation and enforcement of those constitutions are both labor organizations. Plumbers and Pipefitters v. Local 334, supra, at 290. In Local 334, and in subsequent decisions, this Court has also

made it clear that principles of federal substantive labor law also govern the interpretation and enforcement of union constitutions that fall within the purview of 29 USC §185. Id; Allis-Chalmers Corp. v. Lueck, supra, at 118 LRRM 3345, 3349.

This Court has, however, to date, expressly refrained from determining whether lawsuits between individual union members and labor organizations that are based upon union constitutions also fall within the purview of 29 USC §185. Plumbers and Pipefitters v. Local 334, supra, at p. 290, n.16. As a result of the fact that this Court has not yet rendered a decision on this issue, conflicts have arisen among the lower courts as to whether 29 USC §185, and thus as to whether federal substantive labor law, should govern the interpretation and enforcement of union

constitutions in such instances, contrary to dicta in NLRB v. Boeing Co., supra, and Scofield v. NLRB, supra. (See Gable v. Local Union 387, 695 F.Supp. 1174, 1176 (N.D. Georgia, 1988) and cases cited therein.)

The petitioner respectfully submits that it would be contrary to national labor policy to require labor organizations, such as the petitioner and the IBEW, to undertake the impossible task of drafting union documents, such as international constitutions, that will have multi-state applicability, in a manner that will attempt to conform to the eccentricities of the contract law of each state where the documents may be enforced. NLRB v. Allis-Chalmers Mfg. Co., supra, at 1128-1129; Allis-Chalmers Corp. v. Lueck, supra, at 118 LRRM 3349; IBEW v. Hechler, 95 L.Ed.2d. 791, 799, 107 S.Ct. 2161 (1987). Yet that is

exactly the import of the Washington State Supreme Court's April 6, 1989 decision in this matter.

As a result, the petitioner respectfully submits that 29 USC §185 should be held to have been applicable to the instant matter, and that principles of federal substantive labor law should have been applied by the Washington State Supreme Court, in order to interpret and enforce the IBEW International Constitution in this instance. (Id)

In addition, it may also be possible to read the Washington State Supreme Court's April 6, 1989 decision in this matter as holding that 29 USC §185 is inapplicable to the instant matter because the petitioner did not specifically mention 29 USC §185 in its complaint. (See Appendix). If that is the case, the petitioner respectfully submits that such a holding would also be contrary to

federal labor policy.

Numerous cases have established that Congress did not intend to require a party to specifically refer to 29 USC §185 in its complaint in order for its complaint to allege a cause of action under 29 USC §185. Ghedreselassie v. Coleman Security Service, 829 F.2d. 892 (9th Cir., 1987); Fristoe v. Reynolds Metals Co., 615 F.2d. 1209, 1212 (9th Cir., 1980); Hillard v. Dobelman, 607 F.Supp. 111 (E.D. Missouri, 1985).

If the decision of the Washington State Supreme Court in this matter is interpreted as holding that state law is to the contrary, the petitioner respectfully submits that such a holding would conflict with the principles underlying federal labor policy, and thus, that the principles of state law that were relied upon by the Washington State Supreme Court to reach such a holding

would be preempted by federal law. Safeway Stores v. Brotherhood of Teamsters and Auto Truck Drivers, 83 Cal.App.3d. 430, 147 Cal.Rptr. 835 (1978) (holding that state procedural rules are preempted by federal law in actions involving 29 USC §185 where application of those state procedural rules would impinge upon federal labor policy); NLRB v. Allis-Chalmers Mfg. Co., supra.

Therefore, for the foregoing reasons, the petitioner respectfully submits that the Washington State Supreme Court erred in failing to apply federal substantive labor law to the instant lawsuit, and prays this Court to grant the instant Petition in order to correct that error, and in order to resolve conflicts which have arisen on this issue among the lower courts.

Respectfully submitted:

CRITCHLOW & WILLIAMS
Attorneys for Petitioner

By: Alex J. Skalbania
Alex J. Skalbania

David E. Williams
David E. Williams

APPENDIX A
THE SUPREME COURT OF WASHINGTON

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| LOCAL 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, | ) | No. 55257-6 |
| Petitioner, | ) | ORDER DENYING MOTION FOR RECONSIDERATION |
| v. | ) | |
| VICTOR BRAY, ET AL, | ) | |
| Respondents. | ) | |

The Court having decided by majority vote that the petitioner's motion for reconsideration should be denied.

It is ordered that the motion be and it hereby is denied.

Dated this 1st day of June, 1989.

S/
KEITH M. CALLOW
Chief Justice

112 Wn.2d. 253

APPENDIX B

THE SUPREME COURT OF WASHINGTON

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| LOCAL UNION 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Petitioner, | ) | M A N D A T E |
| | ) | No. 55257-6 |
| | ) | Yakima County No. 85-2-00461-1 |
| v. | ) | C/A No. 8637-2-III |
| VICTOR BRAY, ROBERT BORT, JOSEPH PURCZYNSKI and JIMMIE M. SCOTT, Respondents. | ) | |

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Yakima County.

This is to certify that the opinion of the Supreme Court of the State of Washington filed on April 6, 1989, became the decision termination review of this court in the above entitled cause on June 1, 1989. This cause is mandated to the superior court from which the appeal

was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows: $142.89 awarded to respondents Victor Bray and Robert Bort and against Petitioner. Order Denying Motion for Reconsideration was entered herein on June 1, 1989. Copy attached.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court at Olympia, this 5th day of June, 1989.

S/
C. J. MERRITT
Clerk of the Supreme Court, State of Washington

cc: Mr. David Williams
Mr. Patrick Cockrill
Mr. John Biggs
Court of Appeals, Div. III
Reporter of Decisions

No. 55257-6. En Banc.

LOCAL 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Petitioner, v. VICTOR BRAY, ET AL, Respondents.

[1] Labor Relations -- Union Membership -- Nature of Relationship. The constitution of a labor union and the rules adopted pursuant to the constitution establish a contractual relationship between the union and its members.

[2] Labor Relations -- Union Membership -- Fine -- Judicial Enforcement. A labor union can obtain a judgment to collect a fine levied against one of its members providing the union constitution or the rules adopted pursuant thereto specifically authorize such judicial enforcement.

Dore, J., concurs in the result only;

Smith, J., did not participate in the disposition of this case.

Nature of Action: A labor union sought review of an arbitrator's decision preventing it from enforcing in court fines it had assessed against four union members.

Superior Court: The Superior Court for Yakima County, No. 85-2-00461-1, Howard Hettinger, J., on November 21, 1986, granted a summary judgment upholding the arbitrator's decision.

Court of Appeals: The court affirmed the judgment in an unpublished opinion noted at 51 Wn.App. 1029.

Supreme Court: Holding that, absent authorization in the union's constitution or governing rules, the fines were not subject to judicial enforcement, the court affirms the decision of the Court of Appeals and the judgment.

Critchlow & Williams, by David E. Williams and Robert D. Merriman, for petitioner.

Pat Cockrill (of Hovis, Cockrill, Weaver & Bjur), for respondents Bray and Bort.

John S. Biggs, for respondents Purczynski and Scott.

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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| LOCAL UNION 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, | ) | No. 55257-6 |
| Petitioner, | ) | En Banc |
| v. | ) | |
| VICTOR BRAY, ROBERT BORT, JOSEPH PURCZYNSKI and JIMMIE M. SCOTT, | ) | |
| Respondents. | ) | Filed 4/6/89 |

ANDERSEN, J. --

This is a union discipline case.

Local Union 112, International Brotherhood of Electrical Workers (IBEW), AFL-CIO, (hereinafter the Local), fined several of its members for violating its rules, primarily its rule against working on nonunion jobs. The fines assessed against the four union members who are parties to this appeal are as

follows:

> Victor Bray, $8,416, reduced to $4,208 on certain conditions;
> Robert Bort, $8,416, reduced to $4,208 on certain conditions;
> Joseph Purczynski, $12,624, reduced to $6,312 on certain conditions; and
> Jimmie M. Scott, $4,000, with $2,000 suspended on certain conditions.

The IBEW constitution[1] includes a list of 19 offenses for which a member may be penalized,[2] then concludes:

> Any member convicted of any one or more of the above-named offenses may be assessed or suspended, or both, or expelled.

The constitution contains no provision for the enforcement of assessments or fines in a court of law. Rather, all assessments are charged "against the member as regular dues and must be paid

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[1] IBEW Constitution and Rules for Local Unions and Councils under its jurisdiction, as amended September 1982.

[2] IBEW Const. art. 27, §1.

within the time required to protect the member's continuous good standing and benefits."[3] The constitution also provides that any member having past due indebtedness to the union for assessments "shall stand suspended" and generally cannot be reinstated until they have been paid.[4] The bylaws of the Local contain nothing pertinent to the issue before us.

On March 19, 1985, the Local filed a suit in the Superior Court for Yakima County seeking to recover from its four aforesaid members the sum of the reduced assessments noted, plus 12 percent interest from June 2, 1984, except in the case of member Scott against whom

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[3] IBEW Const. art. 20, §2.

[4] IBEW Const. art. 23, §3.

interest was sought from November 5, 1983.

Answers and counterclaims were filed by union members Purczynski and Scott, and apparently also by members Bray and Bort.[5]

The Superior Court referred the case to an arbitrator who, after hearings, held for the union members and dismissed the complaint against them. The parties agreed that the counterclaims would be referred back to the Superior Court. The Local then requested a trial de novo in the Superior Court. Motions for summary judgment were thereafter filed by the four union members and were

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[5]The responsive pleadings of members Bray and Bort to the Local's complaint are not a part of the appellate record. The Local's response to counterclaims, which is in the record, however, refers to counterclaims by Bray and Bort.

ultimately granted by the Superior Court. The members' counterclaims were not ruled on by the trial court but were ordered preserved for trial. The Superior Court also ruled that "[f]or purposes of RAP 2.2(d) the Court finds that there is no just reason for delay and this order shall constitute a final judgment of dismissal" of the Local's claims against the four union member defendants. Attorneys' fees and costs were awarded to the members.[6]

The Local appealed and the Court of Appeals affirmed by an unpublished opinion.[7] That court granted attorneys'

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[6] RCW 4.84.250; RCW 4.84.270; MAR 7.3.

[7] Local 112, Int'l Bhd. of Elec. Workers v. Bray, 51 Wn.App. 1029 (1988).

fees on appeal to union members Bray and Bort[8], but not to union members Purczynski and Scott.[9]

We granted the Local's petition for discretionary review.[10] One issue is presented.

ISSUE

May fines assessed by a union local against certain of its members be judicially enforced by obtaining a civil judgment against the union members in state court?

DECISION

CONCLUSION. Yes, but only if specific authorization therefor is

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[8] RCW 4.84.290.

[9] The provisions of RAP 18.1(a) and (c) requiring the timely service and filing of an affidavit for attorneys' fees were not complied with by Mr. Purczynski and Mr. Scott.

[10] RAP 2.3.

granted by the union's constitution or governing rules adopted pursuant thereto. There was no such authorization in this case.

It is the law of this state that "[t]he constitution of a labor organization and the rules adopted pursuant thereto form a contract between the association, on the one hand, and its members, on the other."[11] This is also

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[11] United Glass Workers' Local 188 v. Seitz, 65 Wn.2d. 640, 641, 399 P.2d. 74, 13 A.L.R.3d 1000 (1965). See Cox v. United Bhd. of Carpenters, 190 Wash. 511, 69 P.2d. 148 (1937); Joinette v. Local 20, Hotel & Motel Restaurant Employees & Bartenders Union, 106 Wn.2d. 355, 362-63, 722 P.2d. 83 (1986).

the prevailing view in other courts, both state and federal.[12] In this regard, "'[t]he courts' role is but to enforce the contract.'"[13]

After analyzing pertinent federal labor statutes, and applying the foregoing contract theory, the United States Supreme Court concluded that "[a] union rule, duly adopted and not the arbitrary fiat of a union officer, forbidding the crossing of a picket line during a strike was therefore enforceable against

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[12] NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 182, 18 L.Ed.2d. 1123, 87 S.Ct. 2001, reh'g denied, 389 U.S. 892 (1967); International Ass'n of Machinists v. Gonzales, 356 U.S. 617, 618, 2 L.Ed.2d. 1018, 78 S.Ct. 923, reh'g. denied, 357 U.S. 944 (1958); NLRB v. Boeing Co., 412 U.S. 67, 75, 36 L.Ed.2d. 752, 759, 93 S.Ct. 1952 (1973).

[13] Allis-Chalmers, at 182, quoting Summers, The Law of Union Discipline: What the Courts Do in Fact, 70 Yale L.J. 175, 180 (1960).

voluntary union members by expulsion or a reasonable fine."[14] The Supreme Court also concluded that "[u]nless the rule or its enforcement impinges on some policy of the federal labor law, the regulation of the relationship between union and employee is a contractual matter governed by local law." (Italics ours.)[15]

The law is now "well-settled that a labor union may impose monetary fines upon its members to enforce compliance with its valid rules or to penalize non-compliance, where such penalties are provided for by the constitution or governing rules of the organization, and the offending member is accorded 'due process'

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[14] Scofield v. NLRB, 394 U.S. 423, 428, 22 L.Ed.2d. 385, 89 S.Ct. 1154 (1969)

[15] Scofield, 394 U.S. at 426 n.3. See Boeing, 412 U.S. at 75-76.

in the union proceedings."[16] Most of the cases dealing with this subject are state cases.[17] Our review of the many cases cited in an extensive annotation on the subject,[18] which includes cases from this state,[19] demonstrates that the foregoing principle is almost uniformly applied with the results in each case varying only as required by the contract law of the state in whose courts the case was filed, or by the language of the

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[16] Annot., Right of Labor Union To Enforce in the Courts Fine Validly Imposed Upon Member, 13 A.L.R.3d 1004, 1004-05 (1967).

[17] See footnote 16.

[18] See footnote 16.

[19] United Glass Workers' Local 188 v. Seitz, supra; Retail Clerks' Local 629 v. Christiansen, 67 Wn.2d. 29, 406 P.2d. 327 (1965).

union constitution which is before the court and the facts of the particular case.

The leading case in our state is United Glass Workers' Local 188 v. Seitz, 65 Wn.2d. 640, 399 P.2d. 74, 13 A.L.R.3d 1000 (1965). Seitz fully accords with the foregoing principles, while making it clear that "the mode of discipline prescribed by the union's organic law must be followed." (Italics ours.) Seitz, at 641. This is a recognition of the labor law principle that "[a] union's constitution and bylaws are the measure of the authority conferred upon the organization to discipline, suspend, or expel its members."[20] In affirming a

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[20] 48 Am. Jur. 2d Labor and Labor Relations §378, at 291 (1979).

summary judgment dismissing a union's suit on a fine assessed by it against one of its own members, the late Justice Hugh Rosellini, writing for the court in Seitz, declared the law as follows:

> The constitution of the plaintiff union provides for the suspension or expulsion of a member who fails to pay a fine assessed against him. The plaintiff has pointed to no provision in the constitution and no facts outside it which would tend to rebut the presumption that the remedy provided in the constitution was meant to be exclusive. This is the mode of discipline available to the plaintiff, under its constitution, and it was evidently considered adequate when that constitution was adopted. In any event, it is the only mode to which the defendant member agreed to submit when he joined the union.

Seitz, at 642.

Seitz is directly in point. Here, as in Seitz, the union's constitution provides for the suspension or expulsion of a member who fails to pay a fine assessed by the Local against that member. Here, also as in Seitz, the

Local did not seek suspension or expulsion of its members but instead brought suit in state court to convert the Local's fines into civil money judgments against its members. Here, again as in Seitz, the union constitution and bylaws contain "no provision for recovery of a fine in a court of law."[21] It follows that since the Local's complaint against its members in this case sought to do precisely what Seitz held a union had no authority to do without specific authorization in the constitution or bylaws, a summary judgment dismissing the Local's complaint was properly granted to the union members.[22]

We decline to overrule the holding of Seitz that a union cannot convert a

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[21] Seitz, 65 Wn.2d. at 642.

[22] CR 56.

fine imposed on one of its members in a union disciplinary proceeding into a civil judgment against the member in a state court unless the union constitution, or governing rules adopted pursuant thereto, specifically authorizes it to do so. It is only fair to union members that if a union-assessed fine can be converted into a civil money judgment against them, which, of course, would be enforceable by garnishment of the members' wages or attachment of the members' property, that the members be made aware of it by the union constitution or bylaws. Our holding is also fair to unions, because they can enforce union-imposed fines against their members in state court if they simply amend their constitutions and/or bylaws to so authorize. Some unions have done this though others have

not;[23] that is entirely up to the membership of the particular union. When Justice Rosellini wrote Seitz for this court over 20 years ago, he made it clear to one and all what had to be done in this regard and why.

The Local also argues that Seitz has been superseded by our recent opinion in Joinette v. Local 20, Hotel & Motel Restaurant Employees & Bartenders Union, 106 Wn.2d. 355, 722 P.2d. 83 (1986). We disagree.

As Joinette pointed out, that case concerned a suit brought in the superior court in accordance with the concurrent jurisdiction provisions[24] of section 301

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[23] See Wellington, Union Fines and Workers' Rights, 85 Yale L.J. 1022, 1054 n.168 (1976).

[24] Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 7 L.Ed.2d. 483, 82 S.Ct. 519 (1962).

of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. §185 (1982). In Joinette, we simply acknowledged the obvious, that much labor law is governed by federal statute, and that when deciding an issue covered by federal statute (where we have the jurisdiction to do so) "substantive principles of federal labor law must be paramount in the area covered by the statute."[25] The case before us is simply a suit on an indebtedness[26] and does not purport to be a section 301 case.[27]

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[25] Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 103, 7 L.Ed.2d. 593, 82 S.Ct. 571 (1962).

[26] The Local's "Complaint" filed against some of its members alleges that "each defendant is indebted to the plaintiff". (Italics ours.) Clerk's Papers, at 167.

[27] See Local Lodge 1297, Int'l Ass'n. of Machinists v. Allen, 22 Ohio St. 3d 228, 490 N.E.2d. 865 (1986).

Furthermore, in this case, unlike Joinette, we are not confronted with a situation where "incompatible doctrines of local law must give way to principles of federal labor law."[28] As set forth above, in cases such as this where a union sues in state court to collect union-imposed assessments or fines, according to the United States Supreme Court, this is a "'federally unentered enclave' open to state law" and governed by local contract law.[29]

Accordingly, we hold that the dismissal of the Local's suit against its members by the arbitrator, which was affirmed by the Superior Court and the Court of Appeals, was proper.

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[28] Lucas Flour, 369 U.S. at 102.

[29] Scofield, 394 U.S. at 426 n.3.

Finally, with respect to attorneys' fees in this court, the only attorneys' fee affidavit filed in this court was filed on behalf of union members Bray and Bort, and it was not filed until after oral arguments herein.[30] It was thus too

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[30] RAP 18.1 provides that if applicable law grants a party the right to recover reasonable attorneys' fees or expenses on review, the party should request same as provided in the rule. RAP 18.1(a). The rule proceeds to specifically require that "[s]even days prior to oral argument, the party should serve and file an affidavit in the appellate court detailing the expenses incurred and the services performed by counsel." (Italics ours.) RAP 18.1(c). The affidavit of mailing, and the accompanying attorneys' fee affidavit by counsel for Mr. Bray and Mr. Bort, were mailed to the Clerk of the Supreme Court on November 14, 1988, just 2 days before oral argument. The affidavit of mailing recites that a copy was also mailed to opposing counsel on that same date. The affidavit was not received and filed by our Clerk until November 16, 1988, at 3:34 p.m. This was after the 1:30 p.m. oral arguments on the case in this court had been concluded. Since opposing counsel had to journey from Yakima to Olympia for the oral arguments,

late to be effectively replied to or answered by counsel for the Local.[31] The requirements of RAP 18.1 not having been complied with or waived,[32] the union

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it is questionable whether he would have even received the affidavit, let alone had any real chance to respond with an opposing affidavit.

[31] Donovick v. Seattle-First Nat'l Bank, 111 Wn.2d. 413, 418, 757 P.2d. 1378 (1988); Lindsay Credit Corp. v. Skarperud, 33 Wn.App. 766, 657 P.2d. 804 (1983).

[32] See Donovick, at 418.

members are not entitled to attorneys' fees and expenses in this court.[33]

Affirmed.

S/
ANDERSEN, J.

WE CONCUR:

S/
UTTER, J.

S/
PEARSON, J.

S/
BRACHTENBACH, J.

S/
CALLOW, J.

S/
DOLLIVER, J.

S/
DURHAM, J.

S/
DORE, J. result only

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[33] Glasgow v. Georgia-Pac. Corp., 103 Wn.2d. 401, 408, 693 P.2d. 708 (1985); Tommy P. v. Board of Cy. Comm'rs, 97 Wn.2d. 385, 401, 645 P.2d. 697 (1982).

APPENDIX E
THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
DIVISION III

| | | |
|---|---|---|
| LOCAL UNION 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,<br><br>Appellant,<br><br>v.<br><br>VICTOR BRAY, ROBERT BORT, DOUG METZ, HENRY SCHUMAKE, JOSEPH PURCZYNSKI, and JIMMIE M. SCOTT,<br><br>Respondents. | ) | No. 8637-2-III<br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

THE COURT has considered the appellant's motion for reconsideration; that motion is denied.

DATED: May 25, 1988.

FOR THE COURT:

S/
J. BEN McINTURFF
CHIEF JUDGE

APPENDIX F
IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

| | | |
|---|---|---|
| LOCAL UNION 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, | ) | No. 8637-2-III |
| Appellant, | ) | |
| v. | ) | Division Three<br>Panel Three |
| VICTOR BRAY, ROBERT BORT, DOUG METZ, HENRY SCHUMAKE, JOSEPH PURCZYNSKI and JIMMIE M. SCOTT, | ) | |
| Respondents. | ) | FILED 5/5/88 |

MUNSON, J. -- The International Brotherhood of Electrical Workers, Local Union 112 (Union) appeals from a summary judgment dismissing its action to recover disciplinary fines against several union members. We affirm.

The Union fined several of its members for allegedly working for non-union employers in violation of the Union

constitution and bylaws. When the members failed to pay the fines, the Union commenced an action in Yakima Superior Court to enforce their payment. Under the local rules of the court, the case was referred to arbitration. The arbitrator determined that under United Glass Workers' Local 188 v. Seitz, 65 Wn.2d. 640, 399 P.2d. 74, 13 A.L.R.3d 1000 (1965) the fines were not enforceable in a court of law. The Union requested a trial de novo in superior court. The court granted the members' motion for summary judgment and awarded attorney fees. The Union's direct appeal to the Supreme Court was transferred to this court.

In Seitz, the union fined a member for violating an agreement not to work behind an authorized picket line. The union constitution provided that in the event a member failed to comply with a

union decision, the member could be suspended or expelled. The union brought an action in superior court to recover the fine. The court determined it had jurisdiction, but dismissed the action because the union's constitution provided the exclusive remedy for collecting fines, i.e., suspension or expulsion. On review, the Supreme Court agreed and explained that it

> is committed to the view that, when parties to a contract foresee a condition which may develop and provide in their contract a remedy for the happening of that condition, the presumption is that the parties intended the prescribed remedy as the sole remedy for the condition, and this presumption is controlling where there is nothing in the contract itself or in the conditions surrounding its execution that necessitates a different conclusion.
>
> The constitution of the plaintiff union provides for the suspension or expulsion of a member who fails to pay a fine assessed against him. The plaintiff has pointed to no provision in the constitution and no facts outside

> it which would tend to rebut the presumption that the remedy provided in the constitution was meant to be exclusive. This is the mode of discipline available to the plaintiff, under its constitution, and it was evidently considered adequate when that constitution was adopted. In any event, it is the only mode to which the defendant member agreed to submit when he joined the union.

(Citations omitted.) Seitz, at 642. Accord Retail Clerks Local 629 v. Christiansen, 67 Wn.2d. 29, 406 P.2d. 327 (1965).

The Union does not attempt to distinguish Seitz. Rather, it contends that subsequent decisions by our Supreme Court and the United States Supreme Court have effectively overruled it, i.e., that federal law applies. The Union relies primarily on NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 18 L.Ed.2d. 1123, 87 S.Ct. 2001 (1967). There, a union sought to enforce disciplinary fines in state court. The members complained to

the National Labor Relations Board that this constituted an unfair labor practice under section 8(b)(1)(A) of the Labor Management Relations Act of 1947, 29 U.S.C. §158(b)(1)(A) (1973). The Court reviewed the legislative history and concluded that Congress did not intend that act to regulate the internal affairs of unions. Allis-Chalmers, 388 U.S. at 185-86. The Court did not hold a union has a right to enforce such fines in court, although it stated in a footnote that

> the potentiality of resort to courts for enforcement is implicit in any binding obligation. Surely it cannot be said that the absence of a "court enforce-ability" clause in a contract of sale implies that the parties do not foresee resort to the courts as a possible means of enforcement.

Allis-Chalmers, 388 U.S. at 182 n.9.

Two years later, the Supreme Court clarified the role of state law in Scofield v. NLRB, 394 U.S. 423,

22 L.Ed. 385, 89 S.Ct. 1154 (1969). There, the union sought to collect fines in state court. In a footnote, the court stated:

> Unless the rule or its enforcement impinges on some policy of the federal labor law, the regulation of the relationship between union and employee is a contractual matter governed by local law. As the trial examiner put it in this case, the [NLRB] "never intended . . . to suggest that the disciplinary action[s] in enforcement of [union] rules . . . were affirmatively protected under the Act, as opposed to merely being not violations thereof." It is thus a "federally unentered enclave" open to state law.

Scofield, 394 U.S. at 426 n.3.

In NLRB v. Boeing Co., 412 U.S. 67, 36 L.Ed.2d. 752, 93 S.Ct. 1952 (1973), the union imposed fines on some of its members who worked during a lawful strike and commenced an action in state court to collect the fines. The Boeing Company complained to the National Labor Relations Board that the fines were excessive and violated section 8(b)(1)(A) of the

Labor Management Relations Act of 1947. The Supreme Court held that when union discipline does not interfere with the employer-employee relationship and does not violate any policy of any act, the Board does not have the authority to evaluate its fairness. Boeing, 412 U.S. at 78. Rather, state courts, applying local contract law, govern the enforcement of the relationship between a union and its members and may determine reasonableness of union fines. Boeing, 412 U.S. at 74-76. See also Local 31, Nat'l Ass'n of Broadcast Employees v. Timberlake, 409 A.2d. 629, 632 (D.C. 1979) (states have jurisdiction to decide union disputes according to state law); Local Lodge 1297, Int'l Ass'n of Machinists v. Allen, 22 Ohio St. 3d 228, 490 N.E.2d. 865, 869 (1986) ("State law governs union lawsuits to collect disciplinary fines.").

Thus, Seitz has not been superseded by federal law as the Union contends. Seitz simply prohibits the Union from seeking court enforcement of disciplinary fines when a union did not provide for such a remedy in its constitution.

Apparently only one other jurisdiction which has addressed this issue has followed Seitz. See Communications Workers, Local 10517 v. Gann, 510 So.2d. 781 (Miss. 1987). Other jurisdictions have enforced disciplinary fines in state court. See, e.g., Local 248 UAW v. Natzke, 36 Wis. 2d 237, 153 N.W.2d. 602 (1967) (court recognized contrary rule there in Seitz); Annot., 13 A.L.R.3d 1004 (1967 & Supp. 1987). Nonetheless, these courts did apply the law of their state. Washington is to the contrary.

The Union also contends Joinette v. Local 20, Hotel & Motel Restaurant Employees, 106 Wn.2d. 355, 722 P.2d. 83

(1986) effectively overruled Seitz. In Joinette, retired union members brought an action against their international union and its local affiliate when they increased their dues in violation of the local union bylaws. The members argued that state common law prohibited the international union from increasing the dues of retired members after the local union promised the retired members they would no longer be subject to dues increases. The court explained:

> Initially, we note that the Members' reliance upon state common law is misplaced. Although a state court has concurrent jurisdiction over a breach of contract action under 29 U.S.C. §185, federal substantive law is controlling.
>
> Under federal law, a union constitution constitutes a "contract" within the meaning of §185, and a union member may bring suit on the union constitution against the union itself. It is this court's duty to ascertain the terms of the Members' "contract" with the International Union and determine whether the latter is liable for its breach.

(Citations omitted.) Joinette, at 362-63.[1]

Although federal substantive law controls an action under a union constitution, the source of federal law may be state law. United Ass'n of Journeymen of Plumbing Indus. v. Local 334, United Ass'n of Journeymen of Plumbing Indus., 452 U.S. 615, 627, 69 L.Ed.2d. 280, 101 S.Ct. 2546, (1981); see also Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 457, 1 L.Ed.2d. 972, 77 S.Ct. 912 (1957); Concrete Technology Corp. v.

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[1] 29 U.S.C. §185 (1978) applies to suits by and against labor organizations and generally provides that suits between an employer and a labor organization, or between labor organizations, may be brought in United States District Court regardless of the amount in controversy. Thus, the statute does not apply to the present case. See Trust Fund Servs. v. Heyman, 88 Wn.2d. 698, 703, 565 P.2d. 805 (1977).

Laborers' Int'l Union, Local 252, 3 Wn. App. 869, 875, 479 P.2d. 125 (1970) ("To the extent that state law is not inconsistent with federal labor law, it may be applied by the process of being absorbed into the corpus of federal labor law."). Joinette is not inconsistent with Seitz.

The trial court awarded attorney fees pursuant to RCW 4.84.250 and RCW 4.84.270 to the members as prevailing parties in an action for damages in an amount less than $10,000. The court also found the members were entitled to attorney fees under MAR 7.3 because the Union sought a trial de novo from an arbitration in a mandatory proceeding and failed to improve its position. Victor Bray and Robert Bort are entitled to attorney fees on this appeal of $2,300. RCW 4.84.290. Joseph Purczynski and Jimmie M. Scott, having

not asked for attorney fees in their brief nor filed an affidavit, are not entitled to attorney fees. RAP 18.1(a) and (c).

The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040.

S/
MUNSON, J.

WE CONCUR:

S/
THOMPSON, J.

S/
McINTURFF, C.J.

APPENDIX G
IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF YAKIMA

| | | |
|---|---|---|
| LOCAL UNION 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, | ) | |
| Plaintiff, | ) | No. 85-2-00461-1 |
| vs. | ) | ORDER FOR PARTIAL SUMMARY |
| VICTOR BRAY, ROBERT BORT, et al, | ) | JUDGMENT FOR SPECIFIED DEFENDANTS AND |
| Defendants. | ) | JUDGMENT OF DISMISSAL OF PLAINTIFF'S CLAIMS |

I. HEARING

1.1 Date. October 16, 1986.

1.2 Appearances. Moving parties, defendants Victor Bray and Robert Bort appeared through their attorney Pat Cockrill of Hovis, Cockrill, Weaver & Bjur; moving parties, defendants Joseph Purczynski and Jimmie M. Scott appeared

through their attorney John S. Biggs; plaintiff appeared through its attorney David E. Williams of Critchlow & Williams; defendants Doug Metz and Henry Schumake did not appear and did not participate in the summary judgment proceedings.

1.3 Purpose. To consider the motion of the defendants for partial summary judgment.

1.4 Evidence. The court considered the records and files herein, the affidavits on file in support of and in opposition to the motion and the memoranda of authorities filed on behalf of the moving parties and the plaintiff.

II. FINDINGS

The court, having considered the evidence and argument of counsel, finds:

2.1 No Issue. There is no genuine issue as to any material fact in this action.

2.2 Judgment. Defendants are

entitled to judgment as a matter of law.

2.3 Dismissal. Plaintiff's claim against the moving parties, defendants, should be dismissed.

2.4 Counter claims. Counter claims of certain of the defendants against the plaintiff are not affected by this order and are preserved for trial.

2.5 Finality. For purposes of RAP 2.2(d) the Court finds that there is no just reason for delay and this order shall constitute a final judgment of dismissal of plaintiff's claim against each of the following defendants: Victor Bray, Robert Bort, Joseph Purczynski and Jimmie M. Scott.

2.6 Attorney fees. Pursuant to RCW 4.84.250, and RCW 4.84.270 defendants are the prevailing parties in an action for damages in an amount less than $10,000.00 and are entitled to reasonable attorneys fees.

2.7 Pursuant to CR 7.3 the plaintiff is obligated to pay reasonable attorney fees to defendant in that plaintiff has sought trial de novo from an arbitration ruling in a mandatory proceeding and has failed to improve its position.

2.8 Reasonable attorney fees for Pat Cockrill on behalf of defendants Bray and Bort are set at $3,105.00. Reasonable attorney fees for John S. Biggs as attorney for defendants Purczynski and Scott are set at $1,200.00.

III. ORDER

On the basis of the foregoing findings, it is

ORDERED that judgment be entered herein in favor of the defendants, Victor Bray, Robert Bort, Joseph Purczynski and Jimmie Scott, and against the plaintiff, Local Union 112, International Brotherhood of Electrical Workers, AFL-CIO, dismissing plaintiff's claim against

the named defendants and awarding defendants their costs and fees as follows: Pat Cockrill of Hovis, Cockrill, Weaver & Bjur, $3,105.00; John S. Biggs, Attorney at Law, $1,200.00.

IT IS FURTHER ORDERED that the counter claim of defendants Joseph Purczynski and Jimmie Scott against the plaintiff are not affected by this order and are preserved for trial.

DATED November 21, 1986.

S/
JUDGE HETTINGER

Presented by:

S/
Pat Cockrill of
Hovis, Cockrill, Weaver & Bjur
Attorneys for Defendants
Victor Bray and Robert Bort

Approved for entry, notice of presentation waived:

S/
John S. Biggs, Attorney
for Defendants Joseph
Purczynski and Jimmie M. Scott

Approved for entry, notice of
presentation waived:

S/_____
David E. Williams of
Critchlow & Williams
Attorneys for Plaintiff

DEFENDANTS AGAINST THE PLAINTIFF ARE NOT AFFECTED BY THIS ORDER AND ARE PRESERVED FOR TRIAL.

APPENDIX H

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF YAKIMA

| | | |
|---|---|---|
| LOCAL UNION 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, | ) | |
| Plaintiff, | ) | No. 85-2-00461-1 |
| vs. | ) | PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES |
| VICTOR BRAY, ROBERT BORT, DOUG METZ, HENRY SCHUMAKE, JOSEPH PURCZYNSKI and JIMMIE M. SCOTT, | ) | |
| Defendants. | ) | |

COMES NOW the plaintiff and submits the following memorandum of points and authorities in opposition to judgment on the pleadings and summary judgment and in support of its own claim for relief herein.

## I. FACTS

Fines were levied by the plaintiff against each of the defendants in accordance with provisions of the IBEW Constitution and Bylaws of the International Brotherhood of Electrical Workers, AFL-CIO for the performance of non-union work while defendants were still members in IBEW Local Union 112. Court action was initiated to collect the fines after a proper demand for payment was made and no payment was forthcoming.

## II. ARGUMENT

While the regulation of the relationship between a union and its members is a contractual matter governed by local law unless the rule or its enforcement impinges on some policy of federal labor law, see Scofield v. NLRB, 394 U.S. 423, 426 n.3 (1969), generally, in the labor setting federal law controls and state

law may be utilized by the courts so long as it is of assistance in the development of the correct principles of labor law or their application in a particular case. Wiley & Son v. Livingston, 376 U.S. 543 at 548 (1964). Furthermore, federal labor rulings as expressed by the United States Supreme Court for the private sector prevail over conflicting state court rulings so that a uniform and coherent labor policy can be formulated. NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 at 183 (1967). It is only through the development of a uniform and coherent national labor policy that catastrophic economic disruption on a coast-to-coast scale is prevented.

Congress in enacting 29 USC §158 (b)(1)(A) (hereinafter §8(b)(1)(A))[1] -

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[1] 29 U.S.C. §158(b)(1)(A) provides that: "It shall be an unfair labor practice

of the National Labor Relations Act (hereinafter "NLRA") mandated a significant policy of non-interference in the internal affairs of unions. This policy was officially recognized by the United States Supreme Court in its landmark decision of NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967) (hereinafter cited as Allis-Chalmers) where it declared that: "Congress expressly disclaimed . . . any intention to interfere with union self-government or to regulate a union's internal affairs." Allis-Chalmers at 184. The rationale for this

---

n.1 (contd.) for a labor organization or its agents - (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [29 USC §157]: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . ."

"hands-off" policy as proclaimed by the Court was that:

> National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvement in wages, hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. 'Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents . . . .' Thus only the union may contract the employee's terms and conditions of employment, and provisions for processing his grievances; the union may even bargain away his right to strike during the contract term, and his right to refuse to cross a lawful picket line. The employee may disagree with many of the union decisions but is bound by them. 'The majority-rule concept is today unquestionably at the center of our federal labor

> policy.' 'The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.'

Allis-Chalmers at 180 (citations omitted) (emphasis added). Moreover, Congress zealously pursued this policy of diminishing outsider regulation of internal union affairs when it enacted the Landrum-Griffin Act, 29 USC §401 et seq. See United Steelworkers v. Sadlowski, 457 US 102 (1982) (Congress was guided by the general principle that unions should be left free to operate their own affairs as far as possible); NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 at 194 (1967); Financial Inst. Employees of America v. NLRB, 752 F.2d. 356 at 363-364 (9th Cir., 1984). In effect, great care should be taken not to undermine union self-government or

weaken unions in their roles as collective bargaining agents since to do so clearly violates the federal policy, as promulgated by Congress, of protecting and maintaining union independence in the regulation of its own internal affairs including the disciplining of its own members. Allis-Chalmers at 183 and 184.

The Washington Supreme Court's declaration in United Glass Workers' Local No. 188 v. Seitz, 65 Wn.2d. 640, 399 P.2d. 74 (1965) (hereinafter cited as Seitz) that where a union's constitution expressly provides for the suspension or expulsion of a member who fails to pay a fine assessed against him but omits a provision for the recovery of an unpaid fine in a court of law the fine cannot be judicially enforced, unquestionably violates both federal statutory and case law as to the prohibition against outsider interference with

internal union affairs. By compelling the "neglectful" union which failed to include the "magic words" in its constitution to make the Hobson's choice of depleting its membership or condoning discord and factionalism from defiant members is certainly the type of outsider interference in union internal affairs which both Congress and the United States Supreme Court here condemned. Such pervasive judicial regulation of internal affairs indubitably undermines union self-government and weakens unions in their roles as collective bargaining agents. Seitz, in effect, substitutes the judiciary for the union hierarchy and allows it to directly dictate how unions should best be internally run or regulated in the court's eyes. This is contrary to the court's holding in Allis-Chalmers and therefore the Seitz decision has expired. Consequently,

unions can seek enforcement of unpaid disciplinary fines against rebellious members in Washington courts even though a judicial enforcement provision is missing from the union's constitution. NLRB v. Hershey Foods Corporation, 513 F.2d. 1083, 1085 (9th Cir., 1975) ("A full union member is subject to union-imposed disciplinary measures enforceable in state courts."); National Cash Register Company v. NLRB, 466 F.2d. 945, 958 (6th Cir., 1972) (union can seek external enforcement of its internal rules at least to the extent of utilizing the courts to collect fines).

Furthermore, it was never the intent of Congress to ban the judicial enforcement of union disciplinary fines, as the court in Seitz did, for two reasons. First, the union-member relationship is viewed as being a contractual obligation with the union capable of seeking judicial

enforcement of the contract since "a lawsuit is and has been the ordinary way by which performance of private money obligations is compelled". Allis-Chalmers at 192. In other words, when confronted with a union-member contract, "the courts' role is but to enforce the [union-member] contract". Allis-Chalmers at 182. Moreover, in dealing with contracts in the labor setting that are attempts at self-government, courts "should not be preoccupied with principles which might apply to an ordinary contract". Hendricks v. Airline Pilots Ass'n. Intern., 696 F.2d. 673, 676 (9th Cir., 1983) quoting from Lodge 1327, Int'l. Assn. of Machinists v. Fraser & Johnston Co., 454 F.2d. 88, 92 (9th Cir., 1971). In Seitz, the supreme court did not promote the enforcement of union-member contracts but rather discouraged it by the creation of a verbiage barrier hindering union

enforcement of fines against delinquent members through the judicial process. In addition, the court founded its creation of this hurdle on the application of ordinary contract principles to union-member contracts. Seitz at 642. Such rationale is in direct conflict with the legal principles expressed by the United States Supreme Court in Allis-Chalmers and the Ninth Circuit in Lodge 1327, Int'l. Ass'n. of Machinists v. Fraser & Johnston Co., supra, and therefore must yield to them since to do otherwise would not contribute to the development of a uniform and coherent national labor policy. See also NLRB v. Retail Clerks U., Local 1179, 526 F.2d. 142, 145 (9th Cir., 1975) ("Union membership is viewed in the nature of a contractual obligation, and thus the union may seek court enforcement of fines levied pursuant to its constitution and bylaws.").

Second, the use of suspension or expulsion by unions as a means for disciplining their members rather than seeking enforcement of unpaid fines in state courts is a detrimental remedy for unions. Seitz proclaims that unions must accept the consequences of their failure to include a provision in their constitutions for the recovery of fines in court and therefore are compelled to seek enforcement of delinquent fines through nonjudicial means such as expulsion. Seitz at 642. However, the Court in Allis-Chalmers concluded that such a policy was in violation of federal labor law because it would inflict upon "the member of a strong union a potentially more severe punishment than court enforcement of fines, while impairing the bargaining facility of a weak union by requiring it either to condone misconduct

or deplete its ranks." Allis-Chalmers at 183-184, 192. Donovan v. Peter Zimmer America, Inc., 557 F.Supp. 642 at 651 (D. S.C., 1982) (discharge is the equivalent of industrial capital punishment). Since the Seitz decision simultaneously advocates labor inequity and the undermining or weakening of unions, it is manifestly contrary to the NLRA and Allis-Chalmers and again must surrender to these paramount authorities. See also Local 1255, Int. Ass'n. of Mach. & Aero. Wkrs. v. NLRB, 456 F.2d. 1214 at 1216 (5th Cir., 1972) ("Union members may be disciplined by various means, including court-enforceable fines.").

In sum, both the NLRA and the United States Supreme Court have expressed policies of non-interference from outside sources in the internal affairs of private sector unions. Employers, federal and state governments, and federal and state

courts are to leave the regulation of internal union affairs solely to the unions themselves since this bolsters the self-government aspect of unions and assists in the maintenance of their strength as bargaining representatives for their members. Allis-Chalmers at 191, 192 n.29. Such independent regulation includes the disciplining of members by unions through the imposition and enforcement of fines by internal or external means. Nowhere in the NLRA is there evidenced a congressional intent to ban or restrict the court enforcement of fines because Congress in formulating the NLRA was cognizant of the debilitating effect judicial enforcement barriers could inflict upon unions in their attempts to preserve precious solidarity. Allis-Chalmers at 192. However, the Washington Supreme Court in Seitz held to the contrary by declaring a court

enforcement of union fines policy which encourages judicial interference in, and the regulation of, internal affairs while discouraging and undermining union solidarity by forcing unions to either unfairly discipline their members or condone members' misconduct, either of which fosters membership dissension. The court in drafting Allis-Chalmers envisioned the existence of such anti-union state court enforcement restraints as generated by Seitz when it proclaimed that: "It has been noted that the state courts, in reviewing the imposition of union discipline find ways to strike down 'discipline . . .'" Allis-Chalmers at 193 n.32. Allis-Chalmers, decided two years after the Seitz case, is clearly fatal to Seitz. Moreover, the limitation of enforcement remedy expressed by Seitz is unquestionably contrary to the spirit of the overriding

NLRA and federal policy of developing a uniform and coherent labor policy; therefore, the Seitz legacy has come to an end. Allis-Chalmers, at 192-193. Consequently, Seitz has been overruled by the United States Supreme Court and Washington trial courts currently have authority to enforce unpaid union fines regardless of whether a provision for court recovery of a fine is present in a union's constitution and/or bylaws so long as they observe the guidelines promulgated by the Court in Scofield v. NLRB, 394 U.S. 423 (1969).

Union fines are neither inherently punitive nor coercive in nature and thus may be enforced in state court. NLRB v. Granite State Joint Board, 409 U.S. 213, 214-215 (1972); NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 at 179 (1967); NLRB v. Retail Clerks U., Local 1179, 526 F.2d. 142 at 145 (9th Cir., 1975) ("The consensual basis of union

membership makes its disciplining of members not coercive within the meaning of section 8(b)(1)(A)."). Nevertheless, a fine may not be enforced in state court if it violates an overriding policy of the national labor laws. Scofield v. NLRB, 394 U.S. 423 at 429 (1969) (hereinafter cited as Scofield). Thus, "when application of a union [disciplinary] rule is found to run contrary to national labor policy, 'the disciplinary action is regarded as coercive within the meaning of section 8(b)(1)(A).'" NLRB v. Glaziers Glassworkers Local U., 632 F.2d. 89 at 91 (9th Cir., 1980) citing and quoting from NLRB v. Retail Clerks Union, Local 1179, supra. Consequently, when encountering a union fine enforcement scenario, a state court must follow the three-part enforcement test articulated by the Supreme Court in Scofield. See

Machinists Local 1327 v. NLRB, 725 F.2d. 1212 (9th Cir., 1984). The Scofield three-part test declares that a union fine is enforceable so long as it (1) reflects a legitimate union interest, (2) impairs no policy that Congress has embedded in the labor laws, and (3) is reasonably enforced against union members. Scofield, at 430; Machinists Local 1327 v. NLRB, supra at 1216, NLRB v. Glaziers & Glass-workers Local U., supra at 91.

First, in the instant case, plaintiff's fines against defendants reflect a legitimate union interest of ensuring solidarity and preventing depletion of its ranks by deterring members from engaging in competing non-union employment. "Eventually, a substantial number of defections could break the union and once again give the employer greater power to set the terms and conditions of employment." Machinists Local 1327 v. NLRB,

supra, at 1217. Second, plaintiff's fines do not impair a policy which Congress has embedded in the labor laws since it has a recognized interest in making rules regarding the acquisition and retention of its membership, and its constitution and bylaws freely permit a member to escape disciplinary fines by voluntarily and permanently resigning from plaintiff and subsequently obtaining non-union work. Id. However, the acquisition of non-union work by the defendants in the present case prior to their resignation is indubitably a violation of plaintiff's rules contained in its constitution and bylaws and therefore defendants "may not betray their colleagues and expect to get away without paying a price for weakening [plaintiff]". Id. at 1218. Third, plaintiff's fines were reasonably enforced against the defendants since plaintiff fully complied with the procedural

requirement expressed in the Labor-Management Reporting and Disclosure Act of 1959 (i.e., the Landrum-Griffin Act), 29 USC §§401-531 (1982)). Prior to the levying of fines by plaintiff, defendants were afforded a full and fair opportunity to present their cases, to cross-examine witnesses, and to appeal an adverse ruling. Furthermore, the imposition of the fines was not carried out by violence or employer discrimination. Scofield, at 430-431; National Cash Register Company v. NLRB, 466 F.2d. 945 at 958-959 (6th Cir., 1972). Thus, in the instant case, collecting fines from defendant-members who broke plaintiff's rules is a reasonable means of enforcement.[2] The enforcement of plaintiff's

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[2] Reasonableness of the amount of the fine is for the NLRB to determine. See Morton Salt Company v. NLRB, 472 F.2d. 416 at 423 (9th Cir., 1972).

fines should be granted by the court.

## III. CONCLUSION

Allis-Chalmers tolls the death knell for Seitz. The Seitz decision violates national labor policy as proclaimed by the NLRA and the United States Supreme Court. Since Seitz has been overruled by Allis-Chalmers and plaintiff's fines satisfy the Scofield three-part enforcement test, the fines in the present case should be judicially enforced. To deny enforcement would constitute grave legal error because plaintiff's self-government would be undermined and its role as a collective bargaining agent would be weakened. Allis-Chalmers at 194.

For the reasons of fact and law presented, it is plaintiff's position that relief can be granted on plaintiff's

stated claim, and this court is respectfully requested to deny judgment on the pleadings, or in the alternative, summary judgment for the defendants.

DATED: This 12th day of November, 1986.

Respectfully submitted,

CRITCHLOW & WILLIAMS
Attorneys for Plaintiff

By: S/
David E. Williams

APPENDIX I

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF YAKIMA

| | | |
|---|---|---|
| LOCAL UNION 112, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, | ) | |
| Plaintiff, | ) | No. 85-2-00461-1 |
| vs. | ) | REQUEST FOR TRIAL DE NOVO BY AND BEFORE THE COURT |
| VICTOR BRAY, ROBERT BORT, DOUG METZ, HENRY SCHUMAKE, JOSEPH PURCZYNSKI and JIMMIE M. SCOTT, | ) | |
| Defendants. | ) | |

COMES NOW the plaintiff above-named, under and in accordance with all applicable rules of court and herewith requests trial de novo in and by the above-entitled Court subsequent to arbitration under such rules of the issues and allegations raised by the plaintiff's complaint in this cause.

DATED: This 5th day of August, 1986.

CRITCHLOW & WILLIAMS
Attorneys for Plaintiff

By: S/_____
David E. Williams

APPENDIX J

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF YAKIMA

| | | |
|---|---|---|
| LOCAL UNION 112, | ) | |
| | ) | |
| Plaintiff, | ) | No. 85-2-00461-1 |
| | ) | |
| vs. | ) | MEMORANDUM |
| | ) | DECISION |
| VICTOR BRAY, et al, | ) | |
| | ) | |
| Defendants. | ) | |

For whatever assistance it might be to the parties, the Arbitrator wishes to indicate the basis for his decision granting the defendants' Motions for Summary Judgment.

The Arbitrator acting as an arm of the Superior Court is, like the Superior Court, bound by the decisions of the Supreme Court of Washington. It appears to the Arbitrator that the case of United Glass Workers' Local No. 188 v. Seitz, 65 Wn.2d. 640 is dispositive of

the issues in this case. The Arbitrator notes in passing that the decision in Seitz was followed in the subsequent case of Retail Clerks' Local 629 v. Christensen, 67 Wn.2d. 29. Both of these cases involved an effort by a local union to collect a fine or penalty imposed upon a member of the union for violations of the union's constitution or bylaws. In each case the court examined the written relationship between the union and its member (whether it be constitution or bylaw) and determined that, viewing the document as a contract, since the remedy of judicial enforcement was not specified therein, therefore refused relief by way of judicial enforcement.

In passing, the Arbitrator is assuming without deciding that he has jurisdiction to hear this matter. This point has never been squarely decided in this State however, the Arbitrator is of the

belief that state courts probably have jurisdiction to hear some matters involving labor relations not withstanding a federal preemption of the field of labor relations generally.

The precise issue for the Arbitrator is the interpretation of the language of Article XXVII, Sec. 19 of the Constitution of the IBEW.

Section 19 provides in part:

> "Any member convicted of any one or more of the above named defenses may be assessed or suspended, or both, or expelled."

The plaintiff has not cited to the Arbitrator's attention any other provision of the constitution or by-laws of the IBEW which permitted the union to utilize the court system for enforcement of fines, assessments, or penalties levied by the union against the member when the various defendants entered into union membership.

Interpretation of written documents is a matter of law to be decided by the Arbitrator. Plaintiff suggests that the afore-cited Section 19 permits alternative remedies to the union and does not preclude enforcement action in the courts. Plaintiff argues that Seitz is distinguishable because in the Seitz case expulsion was the only remedy available and under the IBEW Constitution expulsion is not the exclusive remedy. While the Arbitrator does not have benefit of the precise language of the United Glass Workers' constitution or by-laws before him, the following statement by the Supreme Court of Washington gives some indication of the content of the United Glass Workers' constitution. The Court observed:

> "The Constitution of the plaintiff Union provides for suspension or expulsion of a member who fails to pay a fine assessed against him.*"

The only fair reading that can be

given to that comment by the court is that the Glass Workers' constitution or by-laws or both provided for fines or assessments, for suspension, and/or expulsion of a member who failed to pay a fine levied against him. That is very similar if not identical to the constitutional provision of IBEW cited above.

As the court goes on to observe in Seitz:

> "Plaintiff has pointed to no provision in the Constitution and no facts now cited which would tend to rebut the presumption that the remedy provided in the Constitution was meant to be exclusive. This is the mode of discipline available to the plaintiff, under its Constitution, and it was evidently considered adequate when that Constitution was adopted. In any event, it is the only mode to which the defendant member agreed to submit when he joined the Union."

Nothing has been brought to the Arbitrator's attention that would tend to rebut the presumption of the

exclusiveness of the remedies provided in the constitution of the IBEW. The cases cited by the plaintiff in its Memorandum are instructive but not dispositive of the issue before the Arbitrator. United Association v. Local 334 Pipefitters, 69 L.Ed.2d. 280 (1981) was a suit by a local union against the international for actions taken by the international to which the local objected. The basic teaching of the case is that suit by a local union against the parent international union was within the jurisdiction of the Federal District Courts under 29 USCS Sec. 185(a) and was not a matter for State Court jurisdiction. The case of NLRB v. Allis-Chalmers Manufacturing Company, 18 L.Ed.2d. 1123 (1967) involved determination of whether or not a union's attempt to enforce its fines or assessments or penalties in a State Court system constituted an unfair labor practice.

The Supreme Court of the United States held that it did not. The ruling of the court there did not reach the issue that is before the Arbitrator which is whether the Arbitrator must look beyond the precedents of the State in determining whether the relief sought by the Union, that is enforcement of fines levied against members, could be entertained.

The Arbitrator being of the view that there is no authority requiring him to look beyond the precedents established by decisions of the Supreme Court of the State of Washington and there being no showing to the Arbitrator that other provisions of the constitution or by-laws of IBEW expand its remedies against the defendants beyond those provided in Section 19, the Arbitrator is required to conclude that United Glass Workers' Local No. 188 v. Seitz, supra is controlling.

Accordingly, the defendants' Motions for Summary Judgment as to the claims of plaintiff Local 112 IBEW be and the same are hereby granted.

This being the decision of the Arbitrator, I specifically do not reach the other defenses raised by the defendants in their Answers.

The Arbitrator having indicated to counsel his decision as to the defendants' Motions for Summary Judgment, and being advised by counsel for plaintiff that the decision of the Arbitrator would be appealed, the Arbitrator should note that counsel for all parties after considering the fact that a trial de novo would be required on all issues raised by the Complaint, the Answers and Counterclaims, concurred with the Arbitrator's proposal that he order the hearing on the counterclaims of defendants Purczynski and Scott be deferred to the trial de novo. The

Arbitrator further requested and obtained the commitment of counsel for plaintiff that he would file his Notice of Appeal from the decision of the Arbitrator within 15 rather than the 20 days required by the rule.

The Arbitrator further notes that it appears the counterclaims of the defendants Scott and Purczynski may well exceed the $25,000.00 jurisdictional limit of the LMAR and therefore the Arbitrator might have been required, had not counsel agreed to suspend the introduction of evidence upon the counterclaims, to remand the hearing on the Counterclaims to Superior Court for lack of jurisdiction.

As I announced at the beginning of the Memorandum, the Arbitrator hopes that these thoughts as expressed will be of assistance to the parties in understanding the Arbitrator's decision and

of assistance in presenting the further matters to the Superior Court.

DATED: This 25th day of July, 1986.

Respectfully,

S/
ROBERT R. REDMAN
ARBITRATOR

APPENDIX K

SUPERIOR COURT OF WASHINGTON
FOR YAKIMA COUNTY

| | | |
|---|---|---|
| LOCAL UNION 112, IBEW, | ) | |
| Plaintiff, | ) | No. 85-2-00461-1 |
| vs. | ) | ARBITRATION AWARD |
| VICTOR BRAY, ET AL, | ) | |
| Defendants. | ) | |

The issues in arbitration having been heard in part on July 22, 1986, I make the following decision.

(1) The defendants' Motions for Summary Judgment as to the Complaint of the plaintiff are granted.

(2) The hearing of defendants Scott and Purczynski counterclaims are deferred on the understanding by the Arbitrator that counsel for plaintiff Local 112 intends to appeal the decision of the Arbitrator in this matter. (See attached sheet.)

Twenty days after the award has been filed with the clerk, if no party has sought a trial de novo under MAR 7.1, any party on notice to all parties may present to the Presiding Judge a judgment on the arbitration award for entry as final judgment in this case.

Was any part of this award based on the failure of a party to participate?

Yes _____ No __x__

If yes, please identify the party and explain:

Dated: July 25, 1986 S/_____
Robert R. Redman
Arbitrator

Original to be filed with the Clerk of the Superior Court, Yakima County Courthouse, together with proof of service on the parties. A copy must also be sent to:

Court Administrator
Room 314, Yakima County Courthouse
Yakima, WA 98901

(3) That counsel for plaintiff will initiate the appeal within 15 days of the filing of the Arbitrator's decision.

APPENDIX L

29 USCS § 185

LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§185. Suits by and against labor organizations.

(a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent - Entity for purposes of suit - Enforcement of money judgments. Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer

whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction. For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal

office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process. The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency. For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

APPENDIX M

29 USCS §158(b)(1)(A):

(b) Unfair labor practices by labor organizations. It shall be an unfair labor practice for a labor organization or its agents -

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [29 USCS §157]: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or . . .